UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, as Next Friend of A.C., a Minor, AND JUSTIN HO-WEE WONG	§	
Plaintiffs,	§	
v.	§	CAUSE NO. 3:07-CV-1767-D
VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION	§	
Defendants.	§	

AMENDED NOTICE OF REMOVAL

Defendant Virgin Mobile USA, L.P. ("Virgin Mobile USA")[1] files this Amended Notice of Removal in accordance with the Court's Order of October 26, 2007, pursuant to 28 U.S.C. §1446(a), and Local Civil Rule 81.1, and respectfully submits as follows:

I. PROCEDURAL BACKGROUND

This Amended Notice of Removal is being filed to comply with the Court's Order of October 26, 2007 requiring Virgin Mobile USA to replead its allegations of diversity jurisdiction with respect to Defendant Creative Commons Corporation ("Creative Commons"). An original and a copy of the civil and supplemental cover sheet required under Local Civil Rule 81.1 (1) and (2) were filed with the original Notice of Removal, as were the other required form of documents. However, for the convenience of the Court the documents required under Local Civil Rule 81.1 (a) (3) are attached hereto and the certificate of interested persons has been

1 Plaintiff named as defendant Virgin Mobile USA, LLC. On October 11, 2007, Virgin Mobile USA, LLC merged into a new entity known as Virgin Mobile USA, L.P.

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updated to include counsel for Creative Commons and Virgin Mobile Pty, Ltd. ("Virgin Mobile Australia"), both of which have since consented to removal.

II. STATE COURT ACTION

Virgin Mobile USA is a defendant in a civil action commenced on or about September 19, 2007, in the 134th Judicial District Court of Dallas County, Texas styled *Susan Chang, as Next Friend of A.C., a Minor, and Justin Ho-Wee Wong v. Virgin Mobile USA, LLC, Virgin Mobile PTY LTD., and Creative Commons Corporation*, Case No. DC-07-11386 (the "State Court Action"). Plaintiffs' Original Petition was served on Virgin Mobile USA on October 11, 2007.

Creative Commons is also a defendant in the State Court Action.

Virgin Mobile Pty, Ltd. ("Virgin Mobile Australia") is also a defendant in the State Court Action.

An original of the following documents required to be filed under Local Civil Rule 81.1 (a) are attached hereto as Exhibit 1: (1) the completed civil cover sheet; (2) the supplemental civil cover sheet; (3) the notice of removal with the original of each of the following: (a) an index of all documents that clearly identifies each document and indicates the date the document was filed in the state court; (b) a copy of the docket sheet in the State Court Action at the time of the original removal; (c) each document filed in the State Court Action, except discovery material, individually tabbed and arranged chronologically according to the state court file date; and (d) a separately signed certificate of interested parties that complies with Local Rule 3.1 (f).

No other process, pleadings or orders had been served upon the Removing Defendant in this matter at the time of filing the original Notice of Removal. 28 U.S.C. § 1446(a).

Defendant Virgin Mobile USA timely filed a Notice of Removal within 30 days of its initial receipt of the Petition under 28 U.S.C. § 1446(b). This Amended Notice of Removal is being filed in accordance with the Court's Order of October 26, 2007. Since Virgin Mobile's Notice of Removal was filed, Defendants Creative Commons and Virgin Mobile Australia have filed separate Consents to Removal.

III. JURISDICTION AND VENUE

Pursuant to 28 U.S.C. §§ 1332 and 1441, the federal district courts have original jurisdiction over this action based on diversity of citizenship among the parties in that all defendants are now (and were at the time of removal and at the time the action was commenced) diverse in citizenship from the plaintiffs. Defendant is not, and was not at the time the suit was commenced, a citizen of the State of Texas.

Plaintiffs Susan Chang, as parent and next friend of A.C., a minor, and Justin Ho-Wee Wong are persons who are now (and were at the time of removal and at the time the State Court Action was commenced) residents and citizens of the State of Texas.

Defendant Virgin Mobile USA is a Delaware limited partnership with its principal place of business in Warren, New Jersey. Its predecessor, Virgin Mobile USA, LLC, was a Delaware limited liability company with its principal place of business in Warren New Jersey, at the time the State Court Action was commenced. The general partner of Virgin Mobile USA is VMU GP1, LLC, a Delaware limited company with its principal place of business in Warren, New Jersey. The limited partners of Virgin Mobile USA are Virgin Mobile USA, Inc., a Delaware corporation with its principal place of business in Warren, New Jersey, and Sprint Nextel Corporation, a Kansas Corporation with its principal place of business in Reston, Virginia.

Defendant Virgin Mobile Australia is an Australian company with its principal place of business in Sydney, New South Wales, Australia.

Defendant Creative Commons is a Massachusetts Nonprofit Corporation with its principal place of business in Cambridge, Massachusetts.

Plaintiffs' Original Petition alleges unliquidated and exemplary damages in an unspecified amount. However, in pre-suit correspondence from Plaintiffs' counsel Plaintiffs have demanded no less than $500,000 from Virgin Mobile USA for their claims. Accordingly, it is clear that in the State Court Action Plaintiff Susan Chang was seeking damages of at least $500,000 for alleged mental anguish, the alleged value of A.C.'s likeness, and the exemplary damages that will be sought for the invasion of privacy and libel claims alleged.

Removal to this judicial district and division is proper under 28 U.S.C. § 1441(a) because this district and division embrace Dallas County, the place where the State Court Action is pending.

IV. DEFENDANTS' CONSENT TO REMOVAL

At the time of filing its Notice of Removal Defendant Virgin Mobile USA contacted all other Defendants regarding the State Court Action. None of the other Defendants had been served with process in the State Court Action at that time. Accordingly, their consent was not required for removal. Since then, Defendant Creative Commons has been served and has filed a Notice of Removal and Concurrence in Removal. Defendant Creative Commons' Notice of Removal and Concurrence is attached hereto as Exhibit 2 and incorporated herein for all purposes. In addition, Virgin Mobile USA has since learned that Virgin Mobile Australia was purportedly served under the Texas long arm statute on October 12, 2007 by substituted service on the secretary of state of the State of Texas. At the time of Virgin Mobile USA's original removal, Virgin Mobile Australia had not yet received the citation or Plaintiff's Original Petition in the State Court Action and so advised Virgin Mobile USA. Nor had plaintiffs filed in the State Court action an affidavit of service with respect to either Virgin Mobile Australia or Creative Commons. Since then, Virgin Mobile Australia has received the papers in the State Court Action and joined in the removal. Defendant Virgin Mobile Australia's Consent to Removal is attached hereto as Exhibit 3 and incorporated herein for all purposes.

V. NOTICE

Defendant filed a Notice of Removal in the 134th Judicial District Court of Dallas County, Texas on the date its Notice of Removal was filed with this Court.

VI. COUNSEL OF RECORD

All counsel of record are as follows:

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VII. CONCLUSION

Removal of the State Court Action is proper under 28 U.S.C. § 1441 because it is a civil action brought in a state court, and the federal district courts have original jurisdiction pursuant to 28 U.S.C. § 1332 because the Plaintiffs and Defendants are diverse in citizenship and the amount in controversy exceeds $75,000.

WHEREFORE, Defendant Virgin Mobile USA, pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. § 1446, removed this action for trial from the 134th Judicial District Court of Dallas County, Texas to this Court, on the 19th day of October 2007.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2007, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, Dallas Division using the electronic case filing system of the Court, except that the documents required by Local Civil Rule 81.1 (b) to be two-hole punched at the top and stapled were filed directly with the clerk's office. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. All others were served a copy via U.S. mail:

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